

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

G.B., J.B., and W.B., et al.

APPELLANTS,

v.

Crossroads Academy - Central Street

RESPONDENT.

DOCKET NUMBER WD83756

DATE: December 8, 2020

Appeal From:

Jackson County Circuit Court
The Honorable Charles H. McKenzie, Judge

Appellate Judges:

Division Three: Edward R. Ardini, Jr., Presiding Judge, Alok Ahuja, Judge and Gary D. Witt, Judge

Attorneys:

Linus L. Baker, Stilwell, KS, for appellants.

Stephanie Lovett-Bowman and Angus W. Dwyer, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

**G.B., J.B., and W.B., et al., APPELLANTS,
v.
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WD83756

Jackson County

Before Division Three Judges: Edward R. Ardini, Jr., Presiding Judge, Alok Ahuja, Judge, and Gary D. Witt, Judge

The Bakers appeal from the judgment of the Circuit Court of Jackson County dismissing with prejudice the Bakers' petition requesting a trial de novo or other administrative review regarding Crossroads Academy-Central Street's ("Crossroads") decision not to allow the Baker children to attend school at Crossroads until the Baker children are vaccinated or provide a proper exemption from the vaccination requirements of the statute.

G.B., J.B., and W.B. were enrolled at Crossroads, but the Baker children are not vaccinated because of their parent's religious beliefs. On August 19, 2019, Audrey Baker signed a handwritten note, which provided:

**PURSUANT TO MISSOURI STATUTE 167.181, I AM MAKING A
RELIGIOUS OBJECTION TO VACCINATIONS ON BEHALF OF MY
CHILD & AM GIVING IT TO THE SCHOOL ADMINISTRATOR. I AM
WILLING TO FILL OUT A FORM IF THE SCHOOL PROVIDES IT TO
ME WHICH THEY WILL NOT DO.**

Subsequently, Crossroads notified all parents of unvaccinated children claiming a religious exemption that religious exemptions must be provided on an original Department of Health and Senior Services' form Imm.P.11.A ("Form 11"), as is required by 19 CSR 20-28.010(1)(C)(2). The Bakers failed to provide an original Form 11 to Crossroads. Crossroads notified the Bakers that the Baker children would not be allowed to attend Crossroads after January 7, 2020 unless the children were either vaccinated or the Bakers provided an original Form 11.

The Bakers requested an appeal of Crossroads' administration's decision to Crossroads' Board of Directors ("Board"). The Board met and provided the Bakers and their counsel an opportunity to be heard at a closed session. The Bakers were allowed to argue their position but were not allowed to present testimony. The session was not on the record. The Board upheld the administration's decision and informed Bakers that they must submit either proof of

vaccination or a signed original Form 11 for each child by January 7, 2020 or be disenrolled from school.

The Bakers refused to file an original Form 11 with the school, and the Baker children have not been allowed to return to Crossroads.

The Bakers filed a Petition for Review for Stay of Expulsion of Children and DHSS Regulation ("Petition") seeking a trial de novo pursuant to section 167.161, RSMo, alleging that Crossroads did not comply with its own policies when it suspended or expelled the Baker children specifically requesting the circuit court:

determine that the removal of the Baker children's rights to attend school is ultra vires, unconstitutional, unlawful, unreasonable, arbitrary, capricious, or otherwise involves an abuse of discretion, and further request all relief available under the review statute including the issues of an order of stay, temporary restraining order, or injunction pursuant to 536.120 such that the Baker children will be permitted to attend Crossroads school under the religious exemption statements already provided to the school by the parents allowing those children to attend school without being vaccine injected.

The circuit court dismissed the Petition with prejudice holding that the right to a review of a school's decision under section 167.161 attaches only in the context of a dispute over a school's disciplinary suspension or expulsion of a student. Because the Baker children were not suspended or expelled for a disciplinary reason, the Bakers had no right to seek a trial de novo.

In addition to the instant case, the Bakers have filed two petitions in the United States District Court for the Western District of Missouri. The District Court has dismissed the Bakers' petitions, and the Bakers have appealed their dismissal to the United States Court of Appeals for the Eighth Circuit. However, as relevant to this appeal, the Bakers filed another petition in the state circuit court ("*Baker III*") alleging that 19 CSR 20-28.010 is ultra vires and improperly modifies and expands the scope of its enabling statute; that Crossroads and Crossroads' administrators violated Crossroads' policies and the law governing expulsion and suspension of students; and seeking declaratory judgment that "Crossroads has no authority to require the Bakers to provide the kind of religious exemption statement on Form 11" *Baker III* is currently being litigated in the circuit court, and was filed prior to the instant case.

AFFIRMED.

Division Three holds:

(1) The circuit court did not err in dismissing the Petition because section 167.171 does not provide for a trial de novo of non-disciplinary hearings or proceedings. Furthermore, there are no facts in dispute which would be clarified by formal due process. All parties agree that the Baker children have not been vaccinated and that the Bakers have refused to provide an original signed Form 11 to Crossroads. Neither the Bakers, the circuit court, nor the Board would have benefited by calling additional witnesses subject to cross-examination.

(2) The circuit court did not err in dismissing the Petition because the claim-splitting doctrine precludes the Bakers from raising claims that Crossroads' administrative decisions were unconstitutional, unlawful, unreasonable, arbitrary or capricious or involve an abuse of discretion when the Bakers have raised those identical claims in *Baker III*.

(3) The Bakers raise two separate constitutional challenges on this appeal, but neither one has been preserved for appellate review. First, they assert that Crossroads' actions violated article I section 2 of the Missouri Constitution but never raised that argument in any fashion in their response to Crossroads' Motion to Dismiss. Second, the Bakers argue that requiring individuals to obtain an original Form 11 from the health department "violate[s] the Missouri Constitution regarding freedom of religion, separation of religion, as well as the Missouri RFRA which prohibits discrimination against the Bakers on the basis of their religious viewpoint" without citing to any specific constitutional provisions.

Opinion by: Gary D. Witt, Judge

December 8, 2020

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